UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- x

UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No. 1:16-cr-10094-LTS

v. :

ROSS MCLELLAN, :

Defendant. :

- x

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

MOTION HEARING

Monday, March 26, 2018
1:59 p.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufp@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE - MASSACHUSETTS
BY: STEPHEN E. FRANK
John Joseph Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3244
stephen.frank@usdoj.gov

UNITED STATES DEPARTMENT OF JUSTICE
BY: WILLIAM JOHNSTON
1400 New York Avenue, Northwest
Washington, D.C. 20005
(202) 514-0687
william.johnston4@usdoj.gov

On behalf of the Defendant:

MARTIN G. WEINBERG, P.C.
BY: MARTIN G. WEINBERG
20 Park Plaza
Suite 1000
Boston, Massachusetts 02116
(617) 227-3700
owlmcb@att.net

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is March 26th, the case of United States vs. Ross McLellan, criminal action 16-10094, will now appear before this Court.

Counsel, please identify themselves for the record.

MR. FRANK: Stephen Frank and William Johnston for the United States. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. WEINBERG: Good afternoon, Your Honor, Martin Weinberg on behalf of Ross McLellan, who sits to my left.

THE COURT: All right. Good afternoon.

Good afternoon, Mr. McLellan.

So I think there's three motions, but essentially, it seems like there's -- well, I guess there's two or three issues. One is the defendant's request that I order the Government to invoke the MLAT procedures. Right? One is the request for Rule 15 depositions for two witnesses. And the third is the witness, who I previously issued a Rule 15 order for, who doesn't wish to testify, and who's outside the scope of the Court's subpoena power, you want me to invoke the MLAT for that person, too.

MR. WEINBERG: I do, Your Honor.

THE COURT: All right. So just before we get to all of those, just thinking about this practically, what if the -- would these people be -- would these people be willing to testify by video conference, live at the trial? And would you want that, if they would?

MR. WEINBERG: The answer is, yes, I would want that. I would want them to testify, whether it's contemporaneous with the jury or before the trial. But unfortunately, the three people that I'm trying to acquire testimony from, all of whom were former State Street lawyers, two of whom remain represented by the State Street legal team, have all -- none of them have indicated any willingness to volunteer.

THE COURT: How did you get two of them to sit for the civil deposition?

MR. WEINBERG: Through a letters rogatory process that took some time and navigated its way through the courts, and eventually they required that the two lawyers sit through a civil deposition.

THE COURT: And where was the deposition held?

MR. WEINBERG: It was held in the Freshfields offices. Freshfields is a UK solicitor's firm --

THE COURT: In London.

MR. WEINBERG: -- that works with Wilmer, all of

whom represent State Street.

THE COURT: But the depositions were in London.

MR. WEINBERG: The depositions were in London. I was in Boston with the SEC, in the SEC offices.

THE COURT: So you did it by video conference.

MR. WEINBERG: We did.

THE COURT: I see. So I'm happy to hear you about all the issues, but I'll just tell you a couple of practical things that I'm thinking about in light of looking at the papers.

To the extent the issue -- the argument is made by the Government that, well, these people with the documents, or the witnesses, don't have anything that's really admissible or relevant to offer, and the like, I feel like it's premature for me to make such a ruling. In other words, if these witnesses -- by analogy, if these three witnesses or these were subpoenaed for trial testimony, they had just issued a subpoena to show up on June, whatever date we're starting in June, for trial testimony, and you moved to quash, making the same arguments that you're making, I'd say you're too early. I'm not prepared right now, from what I hear. It's not so plain that I would just say now, quash, they can't bring them in. Later, hard to say. Once we --

You know, these are witnesses you're going to call in your case, if you call them, right?

MR. WEINBERG: Yes.

THE COURT: So we've heard all the Government's case, and I would say to you, essentially, that motion is denied without prejudice. You're renewing it, like, when we get there. And then once I've heard your case and I've seen and I've heard his opening and we see where it's going and I have a better feel for the evidence, then maybe. I don't know. It would just depend.

So the second consideration is that the question -- the relief sought of ordering the Government to invoke a treaty process is a unusual, to say the least, form of relief, that raises lots of questions that would need to be resolved before I would issue such an order.

The down the road -- and many of those -- the issues that it raises are laid out very clearly by the Government in its papers and the problems that it presents. The down the road concern, if you will, I think, the problem or issue that I see lurking out there is, if -- if I -- if there is no right, which may well be correct, that that is no right to force the Government to invoke the MLAT, and then if this evidence is not obtained, that then what we face down the road, I think, since this seems to be a no stone unturned, by and large, defense -- no disrespect, but it's very vigorous, as it should be -- is the argument that's sort of alluded to in the papers, I think, which is that there is

a due process issue with the trial because some set of evidence that was -- existed, wasn't made available.

And this is a complicated, somewhat lengthy, case, and I'm thinking that it would be -- if, to the extent that we can resolve issues and make them go away and solve problems and have this trial decided on the relevant, admissible evidence, wherever the evidence is located, it would be better, putting aside there are complicated legal procedural international issues that bear on -- and separation of powers that bear on lots of these things.

So that's why I started at the outset, and with respect to the witnesses, I'm wondering, I understand why a witness wouldn't want to -- a person who is not a citizen of the United States, who is not employed in the United States, hasn't, at least for these purposes, for this work, hasn't been to the United States, I don't know whether they've come here otherwise, but they're outside my subpoena power, why they might not want to come to a trial and testify, pursuant to a day-to-day, essentially nonbinding subpoena.

On the other hand, maybe they would like -- if they've been in their office, and two of the three of them have already testified, anyway, you know, maybe they'd be willing to testify by video conference. It seems to me, it's not that hard.

You're willing to agree that they could testify by

video conference. They don't have to be here in person. And to the extent you have a right to that, I don't know if the Government has a parallel right or not, but I take it I assume you would likely -- it would seem to me likely you would be satisfied if they were by video conference. You could tell me if you weren't. But these aren't -- it doesn't seem like the kind of witnesses that -- who are -- whose personal presence would be required, as distinct from video conference testimony.

We could arrange that in the course of the trial, during the defense case, that we would take them first thing, 9 o'clock our time, it's roughly 3 o'clock their time, it's business hours. I don't know how long the testimony is, but it doesn't seem like these are two-day witnesses.

So that makes me wonder whether, rather than a deep dive into all the legal issues, what's the potential for sort of -- it mostly falls upon either you, Mr. Frank, or you, Mr. Johnston.

Right?

MR. JOHNSTON: (Nods head.)

THE COURT: Mr. Johnston. Whether like you could prevail upon either the targets of the subpoenas or the individual witnesses. I recognize there's two different categories, documents and witnesses, but at least as to witnesses, whether they're willing to accommodate on a non,

you know -- not on a coercive basis, but by a willingness. In other words, something like that, whether we could work it out. And the same question, really, with respect to the documents. That's really what I'm wondering.

MR. FRANK: Can I just address -- this is actually Mr. Johnston's motion, but I'm going to assert the power of local -- my local authority.

But with respect --

THE COURT: Well, is this assertion -- does this have precedential effect that the local -- does this mean that by Mr. Johnston sitting there, he's in the criminal division, at main justice, as they say?

MR. FRANK: He is.

THE COURT: Does this mean by him sitting silently by, while one of the provinces has asserted in open court on the record it's for the provinces to take control in supremacy, that the main justice is subservient in litigation decisions to local?

MR. FRANK: I think that's exactly what he's saying.

MR. JOHNSTON: We're one big DOJ family.

MR. FRANK: With respect to the documents, Your Honor, I think it's slightly different. I did speak with Mr. Weinberg about the documents last week. We didn't oppose the document requests initially, when he -- when he asked for

the letters rogatory, notwithstanding the fact that we I think would have had a legitimate basis for doing so. They are sweeping requests. They are asking for troves and troves of e-mail.

What I said to him last week is, I don't know if these companies are going to listen to me anymore than they listen to you or respond to me anymore than they respond to you. But if you think they would, I'm happy to go to them with a specific request for a specific document.

THE COURT: More tailored than the broad.

MR. FRANK: You know, if what you really want is, you know, the responses to the RFPs submitted by Goldman Sachs, or whoever else, I'm willing to ask them for those specific documents. What I'm not going to do is ask them for 60 days of e-mails from a variety of people dealing with any aspect of the transition.

THE COURT: Right.

MR. FRANK: So that's what I would say with respect to the documents.

With respect to the individual witnesses, we haven't spoken with those witnesses. They don't -- while they are represented by State Street, two of them are apparently for convenience sake and for financial reasons, they don't work for State Street anymore.

THE COURT: I saw that.

MR. FRANK: I don't think I have any greater likelihood of prevailing upon them than anyone else does. We're certainly not opposed to doing their depositions -- to doing their testimony remotely by video, if that's doable. But I don't know of any reason why they would be more responsive to my request than to Mr. Weinberg's request. Except that if we're willing to do it by video, maybe they would just say, you know, "It's not that big of an inconvenience, I'll do it."

THE COURT: I don't -- you know better than I whether they would be responsive to -- or whether they might be responsive or whether you have -- but I would assume that, (a), the video might be more appealing to them than a deposition; that (b), that whenever that big, happy Department of Justice family makes a request to someone in a different family, that people usually listen. They don't always do it, as I'm sure you well know, but they do listen. And while they don't work for State Street anymore, they're former employees of State Street. State Street maybe was obligated, maybe accommodated them to represent them. State Street listens to you, I suspect, and State Street might be willing to weigh in on it, and that might appeal to them. So I don't know what all their considerations are, but oftentimes people are willing to be reasonable.

And there's also, actually, the other pitch

available to both of you, which is that these people aren't complete and utter strangers to this case; that is, this isn't like the in-house counsel at State Street in the Hong Kong office, who never dealt with Mr. McLellan, never dealt with any of the transitions, never dealt with any of the alleged victims of this case, was in a completely different department and had nothing to do with it, and somebody says, "Hey, we want you to testify in this case." They have at least some -- they touched at least something related to this case.

And I would assume, since they're lawyers, even though they're not US lawyers, that they appreciate the significance of cases in which people's liberty is at stake, and that it's, you know, reasonable to think that why wouldn't they be willing to make available their -- whatever information they have. It may -- it's not -- and especially when they can do it from the comfort of their law office. It doesn't seem to be a substantial inconvenience.

This isn't a case that raises privilege, because State Street has waived. So it seems like it's a question of, you know, how hard is it for them. Right? That's one reason that I thought of a video conference. I just wanted to make sure there wasn't some reason that someone cared about that, which it sounds like everyone's fine with it.

And I thought, to the extent that they do testify

in some form, live testimony would be better than deposition testimony, both because the jury will hear the person live and will be able to size them up, in a different way than watching a TV video of their deposition. And the objections, from my experience, will be vastly easier to resolve realtime, than you all reserving, like the civil practice of reserving objections and filing memos and me reviewing them. But I can't really review it until we get close to the time that the person is going to testify, because it might relate to the Government's case, and then line by line.

And I've done that, but my experience is that neither plaintiff's -- Government counsel, defense counsel, nor the Court find it a very satisfying or helpful process. It's better than nothing but --

What do you have to say about all that, Mr. Weinberg?

MR. WEINBERG: One, of course, it's the evidence that I want to acquire both documentary and testimonially. If the Government can do it without a court order or without us navigating amongst these difficult Constitutional issues, I'm happy.

I also think the Government's got a working relationship with the City of London, which has been tasked by the home office of the UK to implement the seven different letters rogatory in England. And I'm hopeful that Mr. Frank

can weigh on them to expedite their efforts to enforce the letters rogatory. I can't -- I don't know where that process is at, because there's been no communication back from the home office to our UK solicitors. But it's at least another Avenue of an attempt by the Government to do what, up to now, they haven't done, which is to acquire material, and I believe potentially exculpatory evidence, very likely exculpatory evidence, from the entities, many of whom they will call as witnesses in this case. And so again --

THE COURT: So just so -- I'm not making a ruling now about exculpatory evidence or Constitutional obligation to acquire, even if it is exculpatory, whether you have an obligation to acquire things that you have not read, not seen, don't have, because it raises a whole host of different questions. And I am, in the first instance, trying to think about this in a completely nonlawyerly, if you will, but completely practical, recognizing that often practicality and lawyers don't always mesh up, because we all get caught up in the law, which is fine and appropriate. But it's just a question of will these three witnesses be willing to come by video conference, and if they do, it resolves a lot of issues. And will this move if it's sitting in the City of London's desk somewhere, somebody, and they're busy? Can they focus on it and get it done?

Now, to get the Government to do what Mr. Frank has

described, it might involve narrowing, to some degree, your requests. And I have the sense from your papers, to some extent, that at least there's been some back and forth with some of the targets of the letters rogatory, and that at least they complained, to some degree is what it sounds like, and you responded in some way as to some of them. And I don't really know whether that led to a narrowing of your view or not.

MR. WEINBERG: And we don't know. Predictably, it was the two other banks with their armies of lawyers at Nomura and Goldman Sachs that were the two parties that we learned objected to the scope of letters rogatory. We have not learned that there's been any objection from two of --

THE COURT: But did you see what their -- did you see what their objections were?

MR. WEINBERG: Yes. And we --

THE COURT: And you responded. So did your response say, "In light of that, we narrow what we're asking for," or did you say the objections were wrong?

MR. WEINBERG: I believe there was some narrowing.

Is that correct?

MR. NEMTSEV: Yes, that's correct.

MR. WEINBERG: This is Mr. Nemtsev, who is working with me --

THE COURT: Oh.

MR. WEINBERG: -- who was responsible for this part of it.

MR. NEMTSEV: Your Honor, we substantially narrowed the request. We eliminated the requirement that they do a privilege log. We also eliminated the request that they identify where the documents came from. Primarily, the objecting party was Goldman Sachs, not the other party of Nomura. So there, the attorneys just said they couldn't locate the documents requested, because the transition team of Nomura was actually terminated awhile back. But we did narrow the Goldman request substantially.

THE COURT: So as to Nomura, basically, there's nothing to get.

MR. NEMTSEV: They're doing a search again. We identified some search terms they could use and limit what they're finding, and hopefully limit as to relevant materials. But they haven't responded or at least we haven't seen a response from them.

And the other parties did not file objections. One party filed a clarification request. We clarified the request. But they never objected to it.

MR. WEINBERG: The two client parties, who I believe Mr. Frank is going to rely on as part of his prosecution, did not object to the scope of requests, at least according to what our UK solicitors reported as coming

from the home office, which was communicating the level of objection and the limits of the objections.

MR. FRANK: Your Honor, there's a practicality issue and a slippery slope issue here that I just want to identify. I, frankly, have difficulty keeping track. There have been so many letters rogatory. There have been so many document requests to so many different parties. I think it's a little bit unfair. I'm willing to do some to make this easier for Mr. Weinberg, but I think it's a little bit unfair to ask us to go to Eircom and Royal Mail and Goldman Sachs and Nomura and all of these different entities, and the City of London police, with whom I have not spoken in two years, and ask them for documents that the defense wants. I just think there are limits to what we should be asked to do.

I'm willing to do some. If there are specific witnesses he wants, if there's a handful of documents he wants from a couple of entities, that's one thing. But if we're talking about going to six or seven entities for all sorts of different things, you know, I've just come off a trial, I've got two months to prepare for this big trial, I shouldn't be required to spend my time on a search for defense evidence.

MR. WEINBERG: And part of the issue, Your Honor, is that, you know, Mr. Frank and I, I think in good faith, both of us coming at this from different perspective.

THE COURT: Uh-huh.

MR. WEINBERG: My position is the Government should have done this a year ago or two years ago, understanding that what I was seeking was material evidence that would assist the defense on issues that had been raised in the court. And Mr. Frank's position is to -- you know, he could certainly speak to it -- is that: I've got no obligation under MLAT or any other legal obligation to help the defense access evidence, even exculpatory evidence or potentially exculpatory evidence, that's not in my possession. And this evidence, I would not contend, is in Mr. Frank's possession.

We're kind of between all of the principles that mandate the Constitutional imperatives. And I recognize that I'm taking from the *Trombetta* case, which talks about access, and under the proper circumstances we will deal with, you know, exculpatory evidence not in the Government's possession. But that was *California v. Trombetta*, and it was three decades ago. And *Valenzuela-Bernal* talked about it, and the dissenting/concurring opinions talked about it. But there it was a deportation that was proper under immigration law, and the defense didn't come up and make a good faith representation as to why the witness would have material evidence. Had they done it, we would be, perhaps, at a different place.

And there are supervisory cases that do not speak

to this issue, but talk about the court's powers to have a fair trial. I mean, during the readings in the last few days, I'm going to quote from *US v. Nixon*, and then 174 years before *Nixon*, the *Aaron Burr* case, where Justice Marshall wrestled with Aaron Burr's subpoena on President Jefferson to provide a document that he wanted to use in his defense.

THE COURT: What was the resolution?

MR. WEINBERG: The resolution was that Justice Marshall ordered the President to provide the document, in one of those seminal decisions that became a precursor to Rule 17, which --

THE COURT: Did President Jefferson produce it?

MR. WEINBERG: Yes. Yes. It was mentioned often in the *Nixon* case, that presidents are not outside the law. I haven't read the *Paula Jones* case lately, but they might have referenced Aaron Burr there, as well.

But the problem is that Rule 17, of course, has its limits. But it has its purposes. And the Government, preindictment, has all of these asymmetric powers that we know so well. And I've lived with them since the 1980s, whether it's 5K or all of the rest. I don't need to repeat them to this Court. But the asymmetry of rights and powers is supposed to be levelled once you're indicted. And Rule 17 in the *Nixon* case speaks to it as we want to get all the material evidence, so that each party has a full and complete

right to present its case, the defense, as well as the Government.

And some of these cases say: But there's no power to subpoena a foreign national. There is a US national who is oversees, but there's no power to subpoena a foreign national from a foreign country. But that's pre-MLAT. That's the *Filippi* First Circuit case from 1990. And there's been like 60 MLATs since then.

I grant you, only one judge, in an unreported decision that we have some disagreement about, you know, whether exactly what happened because it wasn't reported, which is the *Sindona* case. And I'm old enough to have actually participated in the representation of Mr. Sindona on his subsequent bail jumping case. Judge Marvin Frankel had the Franklin National Bank bankruptcy, and the judge presiding over that, apparently at the defense request, had the Government -- and we don't know just how and when, it was an order or request, used its Swiss MLAT powers, which are written differently than the UK, but not differently than the Netherlands, to go and get a witness to depose; whether in Switzerland or Italy it's not 100 percent clear, but probably Switzerland, from my memory of the fading memory of the *Sindona* case.

But yes, I'm asking the Court to -- I found one of the other case of interest that I gave to Mr. Frank about ten

minutes to 2:00, which is the supervisory ruling from the Ninth Circuit, which upheld a district judge in Montana in the *W.R. Grace* case. The judge ordered the Government to provide a witness list a year before trial, or those witnesses would be excluded. The Government argued on the interlocutory appeal, you have no power to do that, and the court upheld that discretionary decision by the district court under its inherent powers to manager its own court schedule and, essentially, supervisory powers. And that's the *W.R. Grace* case.

THE COURT: And therefore, from that, as applied to this case, that's --

MR. WEINBERG: We have a trial date on June 4th.

THE COURT: Yeah.

MR. WEINBERG: And Your Honor has already received my best efforts to encourage Your Honor to continue it because of the adding of the count that I argued what I argued, and I'm not going to reargue.

THE COURT: Sure.

MR. WEINBERG: But I have a trial date in nine weeks or ten weeks, and I have court issued letters rogatory, and they are mired in the bureaucracies or the different kind of functioning of the different countries. I don't have a single page from any document that I've asked for letters rogatory from four different sovereign nations: The Mideast,

the Netherlands, Ireland, and the UK.

I'm expecting the Netherlands to produce documents, I should tell Your Honor that. Ireland has said they will not produce documents unless they're requested by the Government. That's the way that they read their MLAT, central authority to central authority.

And the UK, we're in kind of a legal quicksand, because everything is where it should be. The home office is relying on the City of London, but we don't know where -- what the City of London has done, whether they have expedited, whether they have delayed, whether they've collected from the parties that don't object. We've asked the home office, "Give us what the entities don't object to. If there are objections, we understand that takes more time." And despite the efforts of very reputable solicitors, who made multiple phone calls, and I've seen their e-mails to Paul Chrome, we don't have any answers. So I can't tell the Court whether these pivotally important evidence from the UK will be produced before June 4.

But the Court has the option to continue the case. And yes, there are cases that discourage it. And I can't even tell you to put it on to September 4, although I like that date, after Labor Day, and I'll have the evidence, because I don't know that I'll have the evidence. But in the implementation of the Court's powers to have a fair trial,

that I argue are required by due process and are argued -- and are required by compulsory clause rights, and I can argue this at length and we argue to some extent in our pleadings, that my biggest position is I've got a Constitutional right to material evidence; that this is not like breath samples in *Trombetta* that have almost no chance of being exculpatory, it's not like the deported alien where there was no proffer of materiality. This is important.

And I thank Mr. Frank for his current willingness to -- a very limited basis, and I'll accept whatever the Government gets to me, because it brings me closer to a fair trial, but it doesn't get me a fair trial. What gets me a fair trial is that the bulk of what we've sought by letters rogatory -- and I can walk the Court through its materiality and why it's more than just a few documents.

The *Litvak* case, which the Second Circuit reversed because of an exclusion of an expert, and they went to a retrial in Connecticut and convicted of one of nine counts they dealt with materiality. There, there was a broker, arm's length brokers, one lied to another. They indicted securities fraud. And the principal evidence, even though materiality is an objective test, what does a reasonable person believe is important or material, they allowed the -- the brokers, the bond brokers to go and testify to their subjective affects of the false statements.

And I have every reason to believe it would be Mr. Frank or Johnston's intention to call the British client, I won't name them, because they are still under pseudonyms, but the British pension client, that was a client of State Street, and to call the Irish client, that was a client of State Street, and several others, and ask for their testimony: Was -- did you understand State Street's fees to be X? What was the effect when you learned they were Y? Would you have dealt with State Street, had you known they would be Y instead of X? Did you understand that the fees that were charged included the broker-dealer, where there was a management fee for transition management advice, and then separate transaction fees that were charged by the broker-dealer, and it's the transaction fees from the broker-dealer, the markups that were modest by comparison, that are the subject matter of the Government's indictment?

And this is -- and I've asked for e-mails with search terms. I've asked, with them, for date limits. But they're pivotal to my ability to cross-examine what are going to be very sympathetic witnesses, one of whom has already testified, at a national hearing, he considered the conduct akin to robbery.

So I know these are going to be adversarial witnesses, whether or not the fees were material to experts, third parties, you know, impartial people. And what I need

is to be able to cross-examine them about how they received State Street's proposal, and how they received the alternative proposals that I will contend required much higher charges; and whether what was important to them is to take a billion dollars of assets that were in the Vanguard Fund and sell them. And the assets were so great it moved the market prices, so the transition managers were required to try to minimize the market impact and get them to Fidelity.

And one of my arguments will be what they really cared about is getting them from A to B, with the overall less costs. It didn't matter very much if they got them at 50 basis points from A to B, and State Street charged five basis points, that was better than someone charging three basis points of a fee, but it cost them 55 basis points to move the billion from A to B. And this is the kind of stuff that they would be talking to each other about and talking to their consultants about and assessing all of the different transition proposals and assessing whether they were happy with State Street's performance.

The Court should know that almost all of the clients, despite their current grievances, rehired State Street for subsequent transitions because the performance was that good and was better than the competitors.

So it goes to materiality. It goes to the

credibility of the current testimony from these aggrieved clients. It goes to what professionals assess was the likely cost of the transition. I mean, one of the Government clients was charged 200,000 pounds for a multiple-billion-dollar transition, and there will be evidence that nobody in that marketplace, no professional would believe 200,000 pounds -- I think it was 242,000 pounds. It's a lot of money to me, but I'm not trading billions of dollars.

So this is going to be very complicated, challenging issues to represent Mr. McLellan. Bankers are not the most popular people on the planet, and there are challenges to have a jury understand the marketplace and what sophisticated investors and their consultants really understand when they're weighing Goldman Sachs, JP Morgan, State Street, and to get that so they're not free to just testify as victims.

And what happened is State Street, there was publicity, and State Street rolled back one of the transitions, and then told the other clients that they felt there was charging that the State Street institution didn't approve. And that will be heavily contested whether or not Mr. McLellan did anything that at almost all levels State Street didn't understand. They got all the money, and there was plenty of evidence that they were charging what they

charged. It went through all the hierarchy in State Street.

But State Street essentially invited these people to make a grievance claim, and they would get back the money. So of course they all, representing trust funds and sovereign wealth funds, couldn't resist the request: Send us a bill, and we'll send a check.

But they're going to be coming into court, they will be adversarial witnesses, and I desperately need what I would get from a domestic entity, Rule 17, which is what the letters rogatory are intended to produce. I wish I had a date, because if that was promised by the UK they'd be here Labor Day.

THE COURT: I understand. Let's see what Mr. Johnston or Mr. Frank wants to say.

MR. WEINBERG: Thank you, Your Honor.

MR. FRANK: Your Honor, the Court has already addressed the timing issue. This case was indicted in 2016. When the Court pushed back the trial date initially, it was because of these letters rogatory. And what I recall Your Honor saying at that point was, the date might come when you still don't have this stuff, and we're not moving the trial date again. And that is supported by abundant precedent. We cited in our brief, Mr. Johnston's brief, a number of cases making clear that trials need not be stayed indefinitely to await the unpredictable development --

THE COURT: Mr. Johnston, does Mr. Lelling have the same authority vis-à-vis Mr. Sessions, as Mr. Frank does to you? Is the principle transferable?

MR. JOHNSTON: I don't have any insights into that level of authority but my pay grade.

MR. WEINBERG: This precedent might empower marijuana retailers to feel a little more emboldened as they go forward.

MR. FRANK: In any event, the Court said it wouldn't wait for the unpredictable developments of foreign proceedings, and that's supported by the case law. We've waited a very long time.

THE COURT: So I'm not moving the trial date today.

MR. FRANK: My point is, it was predictable, it was foreseeable that we might not have -- that Mr. Weinberg might not have these documents. And that's the situation that we're in. And for Mr. Weinberg to argue that it was our obligation at some point to go and get these materials for him, is a little bit arguing both sides of the coin. On the one hand, he has argued that he didn't move for Rule 15 depositions of Beck and Paul, the people that he'd like to depose again, because it wasn't foreseeable to him -- notwithstanding his arguments in front of Judge Woodlock, it wasn't foreseeable to him that those depositions would be material, relevant, and exculpatory. And on the other hand,

he needed to wait for the depositions to know that. And on the other hand, he's arguing that we should have foreseen that he would take the deposition that there's material, relevant, and exculpatory evidence in all of these different places.

So the fact is, this evidence is neither material, relevant, nor exculpatory. It's changing the subject. State Street went and pitched these clients on a fee for its services and then charged a different fee. That's what this case is about. It's not about what other banks would have charged or promised to charge and how well the clients would have done by selecting those banks. They selected this bank, based on a promise to charge X, and it secretly charged Y. That's what this case is about. And that's why all of that other stuff is completely irrelevant to the facts of this case.

And so while, again, we're willing to ask one or two folks to get one or two things that are really important to the defense, what we're not willing to do is now, on the eve of trial, turn this into a fishing expedition for all sorts of documents that we don't even think the defense is entitled to ask for, even if it were a Rule 17 subpoena even domestically. This is a fishing expedition for documents.

Mr. Weinberg stood here and said these are the kinds of things that these consultants and their clients

would be talking about and might be expected to be talking about. And the reason that he's using that terminology is because he doesn't know. He doesn't know that they talked about it or what they talked about or what they said. And that doesn't satisfy the *Nixon* requirements for a Rule 17 subpoena, much less warrant all of the sort of tortuous proceedings that we're talking about putting ourselves through to get this kind of stuff from foreign companies.

MR. WEINBERG: If I can just respond very briefly, Your Honor.

THE COURT: Very briefly.

MR. WEINBERG: Before you loose patience with me.

There's a big difference between Ms. Paul and Beck on one hand, and the Government's obligations, which I continue to propose are mandated by due process. The Government knew, back in July, when the letters rogatory issued, that a letter rogatory process could be slow, and yes might not be here by June 4, 2018, and yet did nothing, despite their asymmetric powers to assist in getting what is material and what I believe is exculpatory.

The *Trombetta* case and the *Bernal* case talk about a diluted obligation to particularize which e-mail is exculpatory or exactly what the witness would say, when they don't have access to the e-mail or the witness. But certainly it is highly likely that the letters rogatory would

generate documents that would be of enormous help in cross-examining the witnesses, and more, not just for impeachment, but in understanding what they understood, what was important to them when they were assessing these multiple bids.

So I don't agree with Mr. Frank that he can sit there, you know, and say because I couldn't know that Paul and Beck would give exculpatory evidence in their testimony until they did, and then four days later we asked for a criminal Rule 15, that that's -- that excuses or extinguishes the foreseeability to the Government that amongst these letters rogatory are documents that would be important in terms of compulsory process, important in terms of substantive evidence, important in terms of cross-examination.

It's been -- we've been litigating. We've put out on the table the letters rogatory, why we need them, Judge Bowler issued them. Yes, there was no opposition. But this doesn't come as a surprise to Mr. Frank, that today is the first day that the Government understands that the defense wants and believes that the evidence they sought is material and exculpatory.

I grant you, it's not like a *Brady* obligation. It's not cemented since the Earl Warren era that the Government has to go and comb through their files. But it

is, I contend, a Constitutional right that is teed up on the unique facts of this case.

And I want to say one more thing in terms of why this is unique, which is that we didn't pick this case, with all its global witnesses. Six out of seven of the alleged victims come from overseas and are not within Rule 17. I didn't pick for State Street to decide, in its strategic interest, to essentially join with the Government and provide the Government with pathways and roadmaps and selected audios and selected e-mails. They flew witnesses over from London. That's preindictment.

So I get the fact that the world is supposed to be asymmetric, because the Government has the power to investigate. But the *Nixon* case talks about an even playing field under Rule 17. And this is one step away. Because in an MLAT world, the Government has the power to get these documents. The foreign countries are compelled.

This country, in the First Circuit case that Judge Lynch wrote about BC said: Yes, we have a Constitution. We're the courts. If an MLAT from some other country is asking us to unconstitutionally require evidence, we're going to assert our judicial powers.

But other than that, these MLATs are not discretionary. There's -- they have limits, but they don't affect -- they limit the Government from going out and

getting evidence that's important to a trial, it's potentially exculpatory, it's material, whether the Government -- the Court orders it. And there's nothing about prohibiting private causes of action that prevent the United States Attorney from using an MLAT to get material and exculpatory evidence, and there's nothing about --

THE COURT: What reason do you have to believe that if, today, they went back to their office, either because I issued a court order or because they decided on their own just to do it, to make an MLAT request, that that MLAT request would actually -- if it were done with reasonable dispatch, but not superordinary speed, reasonable dispatch, that it would be done, responded to, and the documents produced in a meaningful time before the trial?

MR. WEINBERG: Well, the UK MLAT has an option, when things have a time sensitivity, to making the request even telephonic before it's all written.

MR. FRANK: That's just not going to happen, Judge.

MR. WEINBERG: Let me finish.

MR. FRANK: First of all, the fact that Mr. Weinberg keeps using the words "material" and "exculpatory" over and over again, doesn't make it so. He's just throwing those words in here. He has no idea what's in those documents.

Number two, I've never heard of a telephonic MLAT.

What I do know is I need to go through OIA. What I know is that to issue MLATs to one country, much less three countries, even to get through OIA is going to take us basically until trial, much less whatever is going to happen. We're talking about at least a year, if not longer, of a delay in this trial, which this case is already two years old.

I would also add, Your Honor, that while we don't think that the Court has authority to order us to get an MLAT, even if we were to go get an MLAT, and even if we were to say that we were doing it, as we would have to say, on the basis of a defense request for these documents, in all likelihood, even if OIA were to authorize the request, which they wouldn't, we would be faced with other countries responding to us in exactly the way that we would respond if those countries came to us and said, "We're trying to get these documents on behalf of the defense in this case," which would be to say, "We're not going to provide you those documents, because the treaty doesn't obligate us to do that and the treaty doesn't contemplate that."

So the MLAT is essentially a nonstarter here. Unless the Court is willing to create new law by ordering us to get it and to delay this trial by a year or more, there's just no -- the MLAT is just -- it's just an impossibility on the facts of this case at this point in the proceedings.

THE COURT: So here's what -- I'm ending sort of where I began. It seems, in the first instance, that there's some practical issues here. One is the three witnesses and whether one or all of them might be willing to testify by videoconference. I mean, if they prefer depositions, and you all agree, that's fine. But I would think they would prefer live testimony. And it certainly would be, it seems to me, preferable for the jury to have live testimony.

Second, there's a variety of documents that are in England that have been subject to the -- form to some degree to the letters rogatory process that is somewhere, and whether that is -- what is the status of that and whether that process that has commenced and has gotten however far its gotten, whether, either through the City of London police or otherwise, it can be prodded, and as a result, the documents produced.

And third, I suppose there's the documents in Ireland, which really, there's a letter rogatory process that ended, as best we can tell; that is, it was begun, and Ireland took the position, "If you want them, go through the MLAT." So I suppose there's the question is whether the target would be willing to -- I suppose there's no law that prohibits the person with the documents from just producing them on their own, separate from MLAT, separate from letters rogatory.

So the way I think about this, in the first instance, is those are the three subject area of evidence. In a perfect world, which we do not live in, but we could, nonetheless, aspire to, we would have that, at least, before the Court, so that we could then argue about whether it's relevant and admissible, or not, and whether it's material, or not, and what utility it has and the like.

So it -- it also, I think, has the virtue of -- to the extent it's available, of avoiding either the potential -- the issue that seems clear to be raised. I make no view as to whether it's -- how much strength it has. But the issue that Mr. Weinberg is raising, which is that, "Well, then, you know, the trial is infected," I am -- my intent, at the present time, is right now trial is scheduled on June 4th. I haven't heard anything to change my mind about -- I'm certainly not *sua sponte* changing the trial date. And to the extent of what Mr. Weinberg raised was sort of an implicit invitation, then I stand where I stand.

But I think that to the extent that we can -- it may not be resolved fully. It may not be that all the witnesses are here, with all -- video here. It may not be that all the documents that Mr. Weinberg seeks are required. But the degree of potential unfairness -- I'm not saying there is an unfairness if none of it arrives. But the degree of potential unfairness certainly is reduced, the more that

appears.

It may be beyond even the power of a -- a lawyer who can override representatives from Washington. But perhaps not. So it would be, I think, prudent, in the first instance, at least whereas here the Government is not opposed to making some efforts.

I recognize, and I think you make a fair point, Mr. Frank. You have -- is it ten weeks, did you say? Nine weeks? Whatever it is.

MR. FRANK: Something like that.

THE COURT: Something like that to prepare for trial. I certainly don't expect you to spend the whole ten weeks doing the bidding of Mr. Weinberg on this or other issues.

On the other hand, the nature of the litigation process is -- especially the criminal litigation process, is often -- and this isn't going to be the end of things that you're going to have to respond to from Mr. Weinberg, and you know that. And that would be true even if this were a purely case that arose out of a car stop and a much simpler case. You would be making *Jencks* disclosures, and then there would be a request, "Well, what about this?" or there might be an issue about one of the officers, and that might require you to look into it. It might not be anything. So to some extent that comes up frequently.

That said, I think the consideration that you raise is reasonable. And you know, I'm not -- but it's also an issue that you potentially have to face later, as do I. And it would be best for the Government, the Court, and for Mr. McLellan if the trial is fair, or as fair as we can reasonably make it. And so in the first instance, before I resolve all of these issues on the motions, I would be interested to see, what, if anything, could be done to practically resolve it.

I suppose that leads me to one question, which is, I would think the best course is maybe a status report, and the question is should that be in a week? Two week? I don't want to make it too soon to be, like, unreasonable. On the other hand, I don't want to make it too long, because at some point I have to resolve the issues. And I don't know if the two of you want to talk to each other about that, and you can just call Maria and tell me when you would think it would be or whether you want to tell me now. And whatever you think makes the most sense about that.

MR. WEINBERG: I also have a request for a status conference for other issues, which is that given the enormity of the discovery in this case, over 1,400,000 pages, Mr. Frank and I are talking and trying to work out a schedule for things like witness lists, exhibit lists, tape lists. But in the event we can't accommodate each other, we would

want to see the Court --

THE COURT: I'm happy to -- I should say, and I meant to say this at the outset, and I didn't, but it was on my mind, which is, I'm sorry, I think this is the third date for this hearing. And I don't like setting dates and then pulling the rug out from you. I recognize you have other cases and you have obligations in this case, and I don't ordinarily do that. And I apologize for that. I've been busy, and I wanted to be able to give this the attention it deserves.

But I'm happy to see you at any point, as a general matter, when you need to see me on a status conference. I'm happy to schedule that now. I'm happy to wait. And if you talk to each other on these other issues and you think there's utility to having a status conference, you can call Maria. I'll usually be able to see you pretty quickly, within a couple days to a week -- within a day to a week.

I also think it's a sensible idea, in a case like this, that has a lot of documents and a lot of evidence, to think about -- I think I issued a pretrial schedule, in terms of like motions in limine and jury instructions. But if you think a more -- a more detailed schedule is -- to address issues is useful, then I would -- the first question that I have is, well, what days would you want to set. And I would look to all of you. I'm open to that. It's a longer case.

How long do you think it will --

MR. FRANK: I actually don't think it will be that long, Judge. I think we're talking, from our perspective, two to three weeks.

THE COURT: Oh. For some reason, I had the impression that it was four to five.

MR. FRANK: I know that Mr. Weinberg's cross-examines are to the point and concise. And similarly our direct will be to the point and concise. And I don't anticipate an overwhelming number of witnesses.

THE COURT: Two to three weeks for the presentation of your case, including reasonable cross.

MR. FRANK: I believe that's right.

THE COURT: Does that seem right to you as to their case? From what you know so far?

MR. WEINBERG: Two to three, with a likelihood of three, is what I think the Government case, with cross, will take. And then if we put on a defense, depending on the strength of the Government's three weeks, it would not take more than a week.

THE COURT: Okay. So at the point moment, what I should think about would be four weeks, in terms of like, if I were thinking of my own trial calendar, I should block out for sure four weeks, just in case yours went to -- the Government's case went to three; and if you did present a

case and if it went all the way, that would be another week and that would be four.

So my usual -- I think we discussed this before. I usually sit 9:00 to 1:00, but meet with the lawyers at 8:30 to resolve issues so that we can limit the number of sidebars. And I'm also happy to meet with you in the afternoon. It's been my -- I know, Mr. Johnston, since you probably practice elsewhere in the country, that they don't do it that way elsewhere.

MR. JOHNSTON: No. Most full trial days, usually.

THE COURT: Right. I know. They call them "full." But I will tell you, I talked to a juror from one of those other places once, and that juror told me he was deeply unhappy with the court -- not our court, but another court. And one of the things that she was unhappy with was, "I never knew when the day was going to end." And they spent interminable amount of time over at sidebar talking about legal issues, and we sat there, twiddling our thumbs and they were wasting my time.

And so I hear that. And I understand everybody else in the country thinks that like 9:00 to 1:00 is like half time. But I'm not so persuaded that actually going all day ends up being more productive. Because, at least in my experience, when I say 9:00 to 1:00, that means we start at 9:00, and at five of 1:00, whoever is putting on witnesses,

when the witness steps down, call the next witness. And on the other hand, we'll stop at 1:00. But I will -- but you've thought about that in terms of --

MR. FRANK: I have, Your Honor. And having just done a trial that was very strictly 9:00 to 1:00, with a 25-minute break and no sidebars, it -- you know, it moved slower than I would have liked or anticipated. I think in that case, there were multiple defense counsel, and cross-examinations took unusually long.

So the only thing that I would say is I have practiced in one of those other districts, and I've seen jurors sleeping in the afternoon. But I also would ask that the Court not maybe promise the jury that it's always going to be 9:00 to 1:00, in case --

THE COURT: So here's what I'll do about that. I will talk to both of you before -- when we get closer about whether there's either a witness who's coming in, you know, that would be reasonable to accommodate, or whether you foresee some reasonable risk that it would be useful. I have sat in the afternoon. I will do it sometimes.

And I understand that one of the virtues, from the Court's perspective, honestly, if you sit all day, is you wear the lawyers out. So you can't do as much. If we go 9:00 to 5:00, at least you have less time to prepare, and people drop more things is my sense.

But sometimes there are -- I'm not inflexible. And there are times when it makes sense to sit in the afternoon. I have done that. I'm open to that. I simply want -- I want to be able to tell the jurors that at the beginning. So that if we're going -- if the plan is -- if you, either because of the an individual witness or several or just because of timing, given when we're starting, you know, it would be nice to get it to them not -- I forget exactly when the Fourth of July falls, but not to impinge on that week, then maybe sit in the afternoon. Then I would tell them that at the beginning, "We're going to go 9:00 to 1:00, but we could, potentially, and we'll give you notice in advance." But then I wouldn't say to them at 12:00, "You're going until 2:00 today." I'll tell them today for tomorrow. It's only fair, in terms of their lives. And they will pay back in their attention in spades what we give them in terms of just due consideration and courtesy.

So I'm open to that, if that seems -- and we can talk about that a week before or something like that.

MR. WEINBERG: Judge, does it make sense to schedule for some date perhaps late next week or middle of next week, where we could both have the report on whatever efforts Mr. Frank has succeeded in. And also, we could at least --

THE COURT: You think that's a reasonable time on

the other issues?

MR. FRANK: Well, I think the first question is whether Mr. Weinberg intends to narrow some of these requests. And then assuming he's willing to do that, then, you know, I do need to be calling people overseas, multiple different parties, apparently, so I'm going to need some time for that. But I don't think late next week would be a problem. But I think the antecedent question is whether there's going to be any narrowing or whether we're just --

THE COURT: Well, I think as to the three witness, I'm not sure what --

MR. FRANK: That I understand.

THE COURT: Right. But as to the documents, so we're clear, I'm not ordering you to make any phone calls, at all. I'm simply observing the various issues. And it seems practical to do that.

In terms of like narrowing or not, I'm not ordering anyone to do anything, so I'm taking a view of that. I'm not ordering Mr. Weinberg to narrow it, but I'm not saying -- you know, is it prudent to be narrow? Of course. Because to the extent you narrow, you make it easier for the target of the subpoena to comply and it's simpler. I think you appreciate that general proposition.

As to whether, you know, what you want to do about it or not, that's, in the first instance, up to you. You

could decide: You know what? I'm not making the phone calls, unless you narrow it, Mr. Weinberg. That's a free choice for you to make. And I'm not -- since I'm not ordering anything at the moment, I'm not ruling on whether -- narrowing or not. But you know, that's up to --

MR. WEINBERG: I can say what I'm going to do. I'm going to prioritize a list of things that I think that Mr. Frank could easily get. I'm not going to narrow it, if narrowing it means waiving my other requests through the letters rogatory process or my primary request, which is the Government ought to use MLAT. And if they don't, I am reserving my request that this Court exclude or limit the testimony of the witnesses --

THE COURT: I'm not -- I haven't ruled on any of the motions, so you don't -- so that's --

MR. WEINBERG: And I also want to reserve any right to seek a continuance if I find out, through any course, that these letters rogatory will be answered, but answered promptly, but not by June 4. But I can't particularize that at this point.

THE COURT: Nobody is waiving anything by --

MR. WEINBERG: Thank you, Judge.

THE COURT: -- whatever they're doing or not doing. And you're all free to -- everybody knows how to file motions for reconsideration, and so you're all free to seek

reconsideration of anything that I've already ruled upon, and you're all free to seek the same relief -- no relief that I've given or not given in this case or any other case is ever without prejudice to changing that based upon new facts, new evidence, new circumstances. And so you all can do whatever you do about all that, as I'm sure you would do, anyway.

All right. So do you want to come in the end of next week or file something?

There are two different questions. So on the second topic, the other issues, is the end of next week a sensible time, both of you think? Or is that too early?

MR. FRANK: The other issues being the timing of --

THE COURT: Like he was talking about witness lists.

MR. FRANK: I think we've had one preliminary conversation. I'm optimistic.

THE COURT: You should talk a little bit more about it.

MR. WEINBERG: I think we'll be able to work it out.

THE COURT: So if you need something on that, when and if you do, call Maria and just say, "We would like to have a status," on whatever it's about. And if you think it's useful to file something, fine. But if not, you think

it's fine, just you want to talk about it, that's fine, too. And whenever you want to do that, I'll do that.

As to these issues, you want to file a status report in writing, or do you want to come in? And when as to either?

MR. FRANK: I would say we need at least a week, maybe a little bit longer. So --

THE COURT: I would think that -- like end of next week, the beginning of the following week, either for a status report or coming in. I'm fine either way.

MR. WEINBERG: The only reason that I would ask the end of next week, other than, I think, as the case gets closer, having the information gets more important, is that I've got to be in the District of Puerto Rico on a public corruption case on the 11th, afternoon of the 11th, coming back the 13th.

THE COURT: All right.

MR. WEINBERG: So I didn't want those dates to interfere with the Court's schedule.

THE COURT: So how about, are you both here on the 6th?

MR. WEINBERG: Yes, your Honor.

MR. FRANK: Yes.

MR. WEINBERG: That good?

THE COURT: Okay. 6th at 2 o'clock.

MR. WEINBERG: Great.

THE COURT: Mr. Johnston, you're always welcome to come in person, but you're also welcome to come by telephone to something like that, if you prefer.

MR. FRANK: I fear that after what I did today, Mr. Johnston is never coming back.

MR. JOHNSTON: Thank you, Your Honor.

THE COURT: Well, the relationships --

MR. FRANK: Actually, Your Honor, I'm sorry, I'm not here on the 6th.

THE COURT: Okay. How about the 5th?

MR. FRANK: Yeah, I --

THE COURT: You're away all week?

MR. FRANK: It's a last minute family vacation that I forgot about.

THE COURT: That's fine. I think, for fear of after what you've done today, I don't think Mr. Johnston is going to stand up and say, "Judge, don't worry, I'll cover for him."

MR. FRANK: Why don't we file something on the 4th.

And then when are you going? You're gone the 11th to the 13th?

MR. WEINBERG: Yes.

MR. FRANK: And if we feel we need to come in, we could come in like the 10th.

THE COURT: Let me just see one thing about the 10th.

Yes, I could fit you in if I had to.

So file something on the 4th, and tell me on the 4th if you want to come in on the 10th in the filing. If either one of you wants to come in, I'll see you.

(Discussion off the record.)

MR. WEINBERG: Could we have a time, perhaps, at the end of the day on the 4th, just to see the Court? Hopefully, we don't need to see the Court because we've worked out the scheduling. But I hate to have it go to within --

THE COURT: It's hard to see you the end of the 4th.

MR. FRANK: Your Honor, I'm happy to come in on the 4th at any time. I just want to make sure that we have time to --

THE COURT: The problem with the 4th is there's a BBA bench bar here at the courthouse that I'm on a panel, and I don't know -- I think it might be 3:00 to 5:00. I could see you in the -- you know, any time between the beginning of the day and 2 o'clock.

MR. WEINBERG: I think 12 o'clock is good.

MR. FRANK: Sure.

MR. WEINBERG: 12 o'clock, Your Honor?

THE COURT: Sure.

MR. FRANK: That's to revisit these issues?

MR. WEINBERG: To really, if we need, on the scheduling. Because that's actually 60 days before trial.

THE COURT: Scheduling of what?

MR. WEINBERG: If Mr. Frank and I cannot resolve the exhibit lists, witness lists, tapes, transcripts, all of the different issues connected with preparing for the trial and need it to --

THE COURT: I think the two of you need to talk about that with each other.

So wait. On the issues that we're here today, you're going to file something some time on the 4th. And if you want to see me, you'll see me on the 10th. Is that what you're saying about that?

MR. WEINBERG: That would be fine.

THE COURT: All right.

MR. FRANK: I would suggest we save everything until the 10th.

THE COURT: So if you want to see me on the 10th, on the things related to this case, you will say on the filing on the 4th, "Can we see you on the 10th?"

MR. FRANK: Yes.

THE COURT: And then I'll schedule it. Otherwise, we won't have it on the 10th.

As to the other issues, all the other issues, why don't you -- is it really going to impact you if we didn't resolve those until the 10th?

MR. WEINBERG: It's -- quite frankly, my problem is -- and again, Mr. Frank and I have worked on other issues, and I have some degree of optimism we can reach a consensus. But with this many documents, this many tapes, this many transcripts, you know, I'm looking for some production 60 days before trial, and the 10th is within that 60 days.

MR. FRANK: He's not going to be getting any production 60 days before trial. So you know, we're a week away from that or ten days away from that time.

THE COURT: And you're not planning to do it. You don't have it presently underway.

Why don't you talk to each other. Why don't you make a request to him, tell him what you're thinking about, what you want to talk to each other. And if you -- and I just like whatever the issue is, to be joined with each other. In other words, he knows what you want for the schedule.

MR. WEINBERG: I think he knows. And it's a witness list and evidence regarding foreign witnesses, so if I need to go and hire someone in Britain to go investigate somebody.

THE COURT: Why can't we do it on the 10th? What's

the difference between the 10th and the 4th?

MR. WEINBERG: Just six days, where I don't know whether the Court is going to order something. I'm sitting there with 1,400,000 documents, many are e-mails. I know some of the Government witnesses. Clearly the two co-conspirators are high on Mr. Frank's scorecard. But there may be other witnesses that I have 8,000 e-mails for, and I don't want to be spending my time reading those 8,000, if Mr. Frank is going to be calling several other witnesses. It's just an enormous challenge for both sides to properly prepare the case. I don't think it's unfair for me to seek --

THE COURT: Fine. I'll see you on the 4th at noon.

As to the -- the issues for today will -- you can just file something, if you want. And if I need to see you, I'll see you on the 10th about that.

As to these scheduling issues, I'll see you on the 4th to talk about them, if they're not resolved. And it would be helpful to me, if they're not resolved, but some time Tuesday, the end of the day, or whenever, Tuesday, so I could read it Wednesday morning, you just tell me these are -- like this is what -- just without briefing, but you want this.

MR. WEINBERG: Got it.

THE COURT: And the Government says a different

schedule, whatever.

MR. WEINBERG: Thank you, Judge.

THE COURT: Okay. We're adjourned. Thank you very much.

THE DEPUTY CLERK: All rise. This matter is adjourned.

(Court in recess at 3:08 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 7th day of January, 2019.

/s/ RACHEL M. LOPEZ

_____
Rachel M. Lopez, CRR
Official Court Reporter